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can't the flag can be rotated within the bore from a first position to a second position such that in each position every side of the portion of the pole is opposite a side of the bore.

REMARKS

Applicant has amended the application in the manner suggested by the Examiner to overcome the rejection under Section 112.

The Examiner also rejected claims 1-10 based upon a newly cited reference, United States Patent No. 2,638,296, to Battle for a Nursing Bottle Support, in combination with Rendall '996 and/or Adams '865 or Adams '856. Claim 11 was rejected under Section 102(e) based upon Lee '087.

Battle discloses a stand having two sides or frames connected to opposite ends of a rod having a circular or polygon cross-section. The rod does not rotate. (Col. 4, lines 51-52). A bottle holding unit made of rubber has one end with a hole sized to receive the rod. The second end has metal, plastic or wooden jaws that hold a baby bottle. The patent teaches that the bottle holder can be swung accurately around the rod. (Col. 4, lines 62-64). This patent does not disclose or suggest any suction cup. The patent is classified in Class 248, Subclass 105. Class 248 is directed to supports and Subclass 105 covers stands for nursing bottles. One skilled in the art is not likely to consider nursing bottle support stands when seeking to design a suction cup holder. Therefore, the Battle reference is non-analogous art and cannot be properly combined with Rendall or other references that disclose suction cups.

Even if one skilled in the art were aware of Battle that skilled person is not likely to combine Battle with Rendall because the two devices operate in opposite ways. Rendall discloses a suction cup having a neck with a transverse bore. A split ring having a circular cross-

section can be moved accurately about the circular bore. The suction cup does not move. The nursing bottle stand on Battle does not have a suction cup. The rod in Battle that fits through the hole in the holder does not move. Rather the flexible holder moves about the fixed rod. That is opposite Rendall in which the flexible member is fixed and the rigid member moves.

The two Adams references disclose suction cups having a circular bore through the neck that receives a hook. There is no teaching or suggestion in either reference to provide a neck having a non-circular bore.

When the section cup references are viewed as a whole, they consistently teach a circular bore through the neck of the suction cup. Hence, there is no motivation in these references to modify a suction cup to have a multi-sided opening.

For a claim to be obvious from a prior art reference or combination of references, the reference or references must disclose each element of the claim and contain a teaching, suggestion or motivation to combine the references in manner to create the claimed invention. In re Sernaker, 702 F.2d 989, 995-996; 217 USPQ 1, 6 (Fed. Cir. 1983). It is wrong to use applicant's disclosure "as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the results of [applicants'] claims. * * Monday morning quarterbacking is quite improper when resolving the question of nonobviousness..." Orthopedic Equipment Co., Inc. et al. v. United States, 702 F.2d 1005, 1012; 217 USPQ 193, 199 (Fed. Cir. 1983).

At page 5 of the Office Action the Examiner says that it would have been obvious to one of ordinary skill in the art to modify the circular bore in Rendall "to be square cross sections as in Battle '296 so as to provide for a more sturdy holder by allowing the split ring to be more securely maintained in a desired position." But, there is no teaching or motivation in Rendall or

the other suction cup art that a ring should be more securely maintained in a desired position.

Only applicant teaches that a ring be securely maintained in two or more distinct positions in the neck of the suction cup. But, it is error for the Examiner to use applicant's teaching to provide a guide or motivation to modify the references as the Examiner has done. For this reason, the rejection under Section 103 is improper and should be withdrawn.

The Examiner has maintained his rejection of claim 11 under Section 102(e) based upon Lee. Applicant submits that this rejection is improper because the Examiner has interpreted the reference in a manner contrary to what the reference discloses. At page 10 of the Office Action the Examiner states "the Examiner is considering the combination of element 100 and element 101 as the 'flag.' Consequently, the 'flag' is in fact attached to a pole (identified as '80')." Yet, Lee repeatedly identifies item 100 as a "flagpole." See, column 2, line 15, column, lines 22, 27, 42, 58, 62, 63, 65, 66 and 67, and column 4, line 17. Element 80 is identified as a rotor and is illustrated in Figure 3 as having a diameter that is very close to its length (both are about 15 mm). Hence, element 80 is not "a long slender object" and does not meet Webster's definition of a pole. Consequently, one skilled in the art would not regard the rotor 80 as a pole.


At page 12 of the Office Action the Examiner denies that he concluded that the bore in Lee is transverse and requests applicant to provide the exact location of this conclusion purportedly stated by the Examiner. At pages 2-3 of the Office Action dated February 27, 2002, the Examiner rejected claim 11 under Section 102(e) citing Lee '087 as disclosing a holder and flag "wherein the neck has a transverse bore." If the rotor 80 is regarded as the pole, that element fits in bore 72 which is not transverse. There is a transverse hole through the rotor but that hole does not meet the claim requirement of a "neck containing a transverse bore having a multi-sided cross-section." That bore is circular and is not in the neck but is in the rotor which the Examiner

regards as the pole. If the holder in Lee does not have a transverse bore that receives the pole, then Lee does not disclose all the elements of claim 11.

For all these reasons, Lee does not teach or suggest all the elements of claim 11. Therefore, the claim was improperly rejected under Section 102(e).

The Examiner cited but did not rely upon Hoffman '696, Aarons '775, Geisthoff '570 and Laughlin et al. '061. Geisthoff discloses an overhead clutch for a tractor and is non-analogous art. Hoffman and Aarons disclose suction cups having a circular transverse bore through the neck. Laughlin et al. disclose a vehicle flag held on a split ring of circular cross section whose ends fit in a circular bore. They confirm applicant's assertion that those skilled in the art seeking to attach a ring or flag to a suction cup would provide a transverse circular bore through the neck of the suction cup.

For the foregoing reasons, applicant submits that the claims as amended meet the requirements of Section 112 and are patentable over the prior art. Reconsideration and allowance are respectfully requested.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

11. (Twice Amended) A holder and flag device comprising:
- a. a suction cup having a cup portion and a neck extending from the cup portion, the neck containing a transverse bore having a multi-sided cross section, and
 - b. a flag having a display portion attached to a pole, at least a portion of said pole having a multi-sided cross-section complementary to the bore, said portion fitted within the bore so that the flag can be rotated within the bore from a first position to a second position such that in each position every side of the portion of the pole is opposite a side of the bore.